IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6702 of 1993

with

SPECIAL CIVIL APPLICATION No 8547 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AZIMKHAN T PATHAN

Versus

AHMEDABAD MUNICIPAL CORPN

Appearance:

1. Special Civil Application No. 6702 of 1993
   MR NR SHAHANI for Petitioner No. 1
   MR D.C.RAVAL with MR MR ANAND for Respondent No. 1
2. Special Civil Application No. 8547 of 1992
   MR D.C.RAVAL with MR MR ANAND for Petitioner No. 1
   MR NR SHAHANI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 14/08/2003

COMMON ORAL JUDGEMENT

Heard learned advocate Mr. D.C.Raval with Mr. M.R.Anand appearing on behalf of the Ahmedabad Municipal Corporation and learned advocate Mr. N.R.Shahani appearing on behalf of the respondent workman.

2. In both the petitions, one award passed by the Labour Court, Ahmedabad in Reference No. 2297 of 1988 dated 18.1.1992 has been challenged by both the parties. In respect of Special Civil Application No. 8547 of 1992 which has been filed by the Corporation, this Court has issued rule and ad interim relief in terms of para 7 has been granted by order dated 3.12.1992 and thereafter matter has been kept for interim relief returnable on 21.12.1992. This court (Coram: A.P.Ravani, J and J.M.Panchal,J) has passed an interim order on 9.2.1993 which is quoted as under:

"Heard the learned advocates appearing for the parties as regards interim relief. The direction given by the labour court in para 30 of the award as regards reemployment of the respondent-workman on some post other than the post of driver, carrying the same pay-scale of driver, is not stayed. The petitioner Corporation is directed to comply with the said direction latest by March 9, 1993. As regards the direction with regard to payment of 50% of the amount of backwages is concerned, the same is stayed on condition that 50% of the amount awarded shall be deposited with the Labour Court on or before March 31, 1993. As and when the amount is deposited in the Labour Court, the said amount shall be permitted to be withdrawn by the respondent workman. If the aforesaid amount is not deposited by March 31, 1993 interim relief granted herein staying the direction as regards payment of backwages shall automatically stand vacated. Ad-interim relief granted earlier stands modified accordingly."

In pursuant to the interim order passed by this Court on 9.2.1993, learned advocate Mr. Raval appearing on behalf of the Corporation has submitted that 50% amount of the back wages, as ordered by the Labour Court, Ahmedabad has been deposited by the Corporation before the Labour Court and Mr. Shahani has submitted that 50% amount of the back wages has been withdrawn by the concerned workman. Mr. Shahani has submitted that the

order of termination has been passed against the respondent workman on 1.8.1988 on the ground of defect in the eyesight. He was working as a Driver in Municipal Central Workshop.

3. In pursuant to the interim order passed by the Division Bench of this Court on 9.2.2993, the respondent workman was reinstated in service on 9.3.1993 and, thereafter, on 10.8.1995 he expired. Mr. Shahani has also submitted that in the year 1982 he joined as a Driver in the Corporation and he was confirmed on 1.9.1987.

4. The respondent has challenged the termination order before the Labour court, Ahmedabad. The Corporation has produced the show-cause notice issued to the respondent workman before terminating his services and thereafter the termination order has been placed on record. Before the labour court, the statement of claim was filed by the respondent workman and written statement was filed by the Corporation. Thereafter certain documents have been produced by the workman vide Exhibit-7 and Exhibit-13 and, Corporation has also produced certain documents vide Exhibit-11. Then the workman was examined vide Exhibit-9 and he had stated on oath that he worked with the employer as Driver from 1983 to 1988. He received the notice on 11.5.1988 and he was discharged from service. No inquiry was held against him and no compensation has been paid to him. No accident had occurred in his service career during with the Corporation. In cross-examination it is stated that he was made permanent in July 1987. Thereafter he was sent for eye test in Nagri Eye Hospital and Civil Hospital, Ahmedabad. The Doctor of Nagri Hospital recommended to give him table work. Though money-order was sent by the Corporation but same was refused by the respondent workman. No further evidence was lead by the workman and he closed his evidence vide Exhibit-12. Thereafter one witness from the Corporation Mahendra Jagjivandas Mehta was examined vide Exhibit-14 who stated on oath that he is the In-charge officer in the Central Workshop. The concerned workman was sent for eye test to Nagri Eye Hospital. The certificate was produced vide Exhibit-11. Thereafter, workman was sent to Civil Hospital, Ahmedabad for further eye test and, ultimately, the Medical Board has declared him unfit for the post of Driver vide Exhibit-11/4. Therefore, according to the witness of the Corporation, the services of the respondent workman was terminated because of the eye defect. In cross-examination it is further deposed by the witness of the Corporation that when the Driver is taken on work his

thorough medical checkup was done but in the case of the concerned workman it was not done through oversight. The concerned workman was considered in service w.e.f. 1.9.1987 vide Exhibit 7/17. He also admitted the fact that there was no complaint regarding the work of the concerned workman nor any traffic case by police was made against the workman and he had not committed any misconduct. Thereafter, the Labour Court has examined the oral evidence as well as documentary evidence and come to the conclusion that service of the workman was terminated not on the ground of misconduct, but because of declared unfit by the Medical Board. Therefore, according to the Labour Court it is not a retrenchment, hence question of payment of compensation does not arise. The Labour Court has considered certain decisions which have been relied upon by the respective parties and discussed the same in the body of the award. However, Labour Court has made observations in para 28 that, it is misfortune of the concerned workman that though he is physically fit with normal vision suffers from colour deficiency which hinders him to perform his job as a Driver. Unfortunately, according to medical opinion, this deficiency cannot be cured by treatment. Therefore, Labour Court has come to the conclusion considering the fact that the concerned workman was appointed as Driver in 1982, first as a daily wager and then was confirmed w.e.f. 1.9.1987 and during his service he was not involved in any traffic case. This fact was not contradicted by the Corporation. Therefore, Labour Court has considered that if the reinstatement order has been passed by the Labour Court against the Corporation on the post of Driver it will create difficulty and it may happen that some accident may be occured by the workman in future which adversely affect to human life. Therefore, Labour Court though it fit to give him employment in an alternative post other than the post of Driver. Therefore, the Labour Court has directed to the Corporation to re-employ the concerned workman not on his original post of Driver but on some other post carrying the same pay scale that of a Driver and the Labour Court has granted 50% back wages of interim period from the date of discharge till the date of reinstatement. The Labour Court has also made it clear that if the workman will not accept the said offer of alternative employment, then workman is entitled the full back wages of interim period, retrenchment compensation and other benefit without considering any break in service.

5. Learned advocate Mr. Raval appearing on behalf of of the Corporation has submitted that Labour Court has no jurisdiction to pass an order to direct the

Corporation to grant alternative employment in favour of the respondent workman. He also submitted that once the respondent workman was medically declared unfit by the Medical Board then, the order of termination has been rightly passed by the Corporation. In such case no interference is required by the Labour Court. He also submitted that Labour Court has committed gross error in granting 50% back wages in favour of the respondent workman. In short, his submission is that Labour Court has committed gross error while interfering with the termination order passed by the Corporation. Therefore, he submitted that some interference by this Court is necessary. Mr. Raval has also further submitted that because of the Medically Unfit declared by the Medical Board, termination cannot be considered to be a retrenchment within the meaning of Section 2(OO) of the Industrial Disputes Act, 1947.

6. Learned advocate Mr. Shahani appearing on behalf of the respondent workman has submitted that Labour Court has committed gross error in not granting the reinstatement to the workman and not granting full back wages of the interim period though there was no evidence produced by the employer about the gainful employment of the respondent workman. No doubt, he also emphasized that such termination is not based upon continuous ill-health but it was a defect of the colour vision of the respondent workman and same may be considered to be a retrenchment of the respondent workman within the meaning of Section 2(OO) of the Industrial Disputes Act, 1947 and no retrenchment compensation and notice served or notice pay paid at the time when termination order was passed. He submitted that he was directed to drive a refuged vehicle even though there are light work available on the post of Driver. He also emphasized that in pursuant to the interim relief, workman was reinstated in service on 9.3.1993 and thereafter he expired on 10.8.1995. However, he submitted that thereafter 50% back wages deposited by the Corporation is not on the basis of continuity of service and same has been considered to be a break in service and therefore, workman is entitled atleast 50% back wages on the basis of continuity of service and other service benefits.

7. I have considered the submissions made by both the learned advocates and, considering the fact which are not disputed between the parties that, services of the workman was terminated on the basis of the unfit declared by the Medical Board because of the defect in the colour vision, the Labour Court has granted reemployment to the other post. When the termination order is under

challenge before the Labour Court, then it is open for the Labour court to grant appropriate relief looking to the facts and circumstances of the case. If the Labour Court has come to the conclusion that termination is unjustified then the Labour Court should have to grant some relief to the workman while exercising powers under Section 11(A) of the Industrial Disputes Act, 1947. This aspect has been rightly appreciated by the Labour Court and, for that, observations are made by the Labour Court in para 27 and 28 of the award. According to the Labour Court, on such ground, the termination is harsh and unjustified, on the contrary it is the duty of the Corporation being a State authority to absorb the workman on any other alternative post in light work but, that approach is not taken by the Corporation and that is how the workman has faced the termination. The Labour Court has considered that in the facts and circumstances of the case, granting 50% back wages of the interim period will meet the ends of justice and, therefore, Labour Court has granted 50% back wages of interim period when workman has been terminated because of unfit. Then the question of gainful employment has been presumed by the Labour Court to some extent and therefore, a Driver, normally, the presumption is that, may not remain without any work, therefore, Labour Court has granted 50% back wages. According to my opinion, for that Labour Court has not committed any error and even if, while granting reinstatement in any other alternative post, carrying the same pay scale for the post of Driver, in such circumstances justified, on the contrary it is the duty of the Corporation being a State authority to absorb such employee having such defect, not able to perform the work of Driver but able to work for other category because he was SSC and Pre-Arts. Even that skill has not been taken into consideration by the Corporation by absorbing the respondent workman on any equivalent post. Even Corporation can take clerical work from the respondent workman but no such efforts was made and shown by the Corporation, that is how, the matter went to the Labour Court and the Labour Court has granted the relief. However, the employee is working for number of years since 1982 and his services was terminated in 1988, then Corporation should have to think twice before passing the termination order for such defect in the eye, and therefore, according to my opinion, Labour Court has rightly appreciated this fact and granted the reemployment to the other post carrying the equal pay scale as the post of Driver. For that Labour Court has not committed any error, on the contrary, the Labour Court has shown human approach in such matter. Therefore, according to my opinion, the Labour Court has

not committed any error which require any interference by this Court.

8. However, considering the submissions made by learned advocate Mr. Shahani that while re-employing the respondent his services has not been considered continued. He is also having some grievance about not to give annual increment from the date termination of the workman. Therefore, in short, his submission is that 50% back wages is not properly calculated as per the rules of the Corporation. He, therefore, submitted that this Court may direct the Corporation to calculate properly the 50% back wages after giving the increment and whatever other service benefits available to the workman and remaining amount must have to be paid to the legal heirs of the respondent workman.

9. After considering the submissions made by both the learned advocates and considering the facts of the case, according to my opinion, the Labour Court has rightly exercised its jurisdiction. Labour Court has not committed any error and there is no procedural irregularity committed by the Labour Court. The finding given by the Labour Court is not baseless and perverse which require any interference by this Court while exercising powers under Article 227 of the Constitution of India.

10. In view of these facts, it is directed to the Corporation to consider the service of the respondent workman as continuous service from 1982 till the date of death of the workman and, whatever the service benefits including the increment as well as difference of wages, if available, to the workman and, re-calculation of 50% back wages available to the respondent workman, same may be calculated and paid and, whatever the balance amount from the deposited amount by the Corporation, the balance amount must have to be paid to the legal heirs of the respondent workman within a period of three months from the date of receiving the copy of the said order. It is further directed to the petitioner Corporation to pay remaining 50% back wages from the awrded amount to the legal heirs of workman and to calculate as directed above within a period of three months from the date of receiving the copy of the said order.

11. In result, both the petitions are dismissed. with no order as to costs. Rule is discharged. Interim relief stand vacated.

(H.K.Rathod,J)

Jayanti*